In the High Court of Judicature at Madras

Dated:07.12.2006

Coram:

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice S.TAMILVANAN

Writ Appeal No.360 of 2003

V.Lakshminarayanan ..Appellant/Petitioner

..vs..

1. The Chief General Manager,
   State Bank of India,
   Local Head Office,
   21, Rajaji Salai,
   Chennai-1.

2. The Trustees,
   IBI/SBI Employees Pension
   and Guarantee Fund,
   State Bank of India,
   Central Office,
   Madam Cama Road,
   Bombay-21. ..Respondents/Respondents

Writ Appeal filed under Clause XV of the Letters Patent against the order dated 02.08.2002 passed in W.P.No.11492 of 2001 filed under Article 226 of the Constitution of India to issue Writ of Mandamus directing the respondents to fix my basic pension correctly based on my revised basic pay of Rs.6190/- p.m subject to a maximum of Rs.2400/- p.m with effect from 01.03.93 as per Rule 23(2) of the State Bank of India Employees Pension Fund Rules 1955 as it stood on 01.03.93 read with the industry wise settlement dated 14.02.95 (Bipartite Settlement) and pay me arrears thereof from 01.03.93 with interest at 24% p.a. till date of payment.

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For Appellants : Mr.N.G.R.Prasad for
M/s.Row & Reddy

For Respondents : Mr.P.Sukumar for R1
No appearance for R2

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JUDGMENT

P.SATHASIVAM, J.,

The above Writ Appeal is directed against the order of the learned single Judge dated 02.08.2002 made in W.P.No.11491 of 2001, in and by which, the learned Judge, after finding that there is no merit in the writ petition, dismissed the same.

2. The writ petitioner is the appellant. For convenience, let us refer the parties as arrayed in the writ petition.

3. The case of the petitioner is briefly stated hereunder. According to him, he retired from the services of the 1st respondent bank as Head Clerk on 28.02.2003 on attaining the age of 58 years. At the time of retirement, he was drawing a salary of Rs.7417/- inclusive of all allowances and his basic pay was Rs.3220/- per month. The 2nd respondent, in their meeting held on 10.03.1993, rightly sanctioned him a monthly pension of Rs.1949/- with effect from 01.03.1993 and he was getting the same regularly. While so, a Settlement under Section 18(1) of Industrial Disputes Act, 1947 between the Indian Banks Association and various Employees Unions was entered into in February, 1995 (to which the respondent Bank was a signatory), revising the pay scales of the employees retrospectively from 01.11.1992. Pursuant to the said Settlement, his basic salary was revised as Rs.6190/- as against the earlier basic of Rs.3220/- with effect from 01.11.1992 and he was also paid arrears till 28.02.1993, i.e. the date of his retirement.

4. As a natural consequence, his basic pension ought to have been revised based on the revised basic pay of Rs.6190/- with effect from 01.03.1993 and paid the arrears thereof. However, unfortunately, the respondents failed to work out his correct basic pension and pay him arrears, which was unjust and illegal. He made several representations. However, the respondents, by their communication dated 06.03.2000, declined his rightful demand stating that his cut-off date fixed for revision of pension date is 01.11.1993, which has no bearing to his claim effect from 01.03.1993.

5. The respondents having rightly revised his basic pay with effect from 01.11.1992 as per Settlement and paid his arrears till date of retirement, ought to have calculated his basic pension, based on his revised basic pay and paid him arrears, which they have willfully failed to do so far in spite of demands.

6. On behalf of the 1st respondent, Assistant General Manager of the 1st respondent Bank filed a counter affidavit, stating that the writ petition is not maintainable and is liable to be dismissed on the ground of delay and laches. It is stated that there is long delay of eight years

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in filing this writ petition from the date of his retirement and seven years from the date of Bipartite agreement. Regarding merits, it was stated that the petitioner is not entitled for revision of pension under Rule 23(2) before its amendment based on the last drawn salary under the Bipartite Settlement dated 14.02.1995. The payment of pension to the petitioner is fully governed by the State Bank of India Employees Pension Fund Rules. Implementation of benefits will not confer right or alter the pension drawn by the petitioner which are governed by separate Rules.

7. In the light of the above pleadings, we heard Mr.N.G.R.Prasad, learned counsel for the petitioner and Mr.P.Sukumar for the 1st respondent.

8. The only point that arises for consideration in this appeal is whether the petitioner is entitled to the relief, as claimed in the writ petition ?

9. It is not in dispute that the petitioner retired from service on 28.02.1993 on attaining the age of 58 years. Considering his basic pay, eligibility criteria etc., the 2nd respondent sanctioned him a monthly pension of Rs.1949/- with effect from 01.03.1993. It is also not in dispute that as per the Settlement under Section 18(1) of Industrial Disputes Act between Indian Banks Association and various employees Unions in February 1995, pay scales of the employees were revised retrospectively, namely, from 01.11.1992. Since the petitioner retired only on 28.02.1993, pursuant to the said Settlement, his basic salary was revised as Rs.6190/- as against the earlier basic of Rs.3220/- with effect from 01.11.1992 and he was also paid arrears till 28.02.1993 i.e. the date of his retirement. The fact that his basic salary was revised pursuant to the Settlement is not disputed.

10. As rightly pointed out by Mr.N.G.R.Prasad, learned counsel for the petitioner, as a natural consequence, the petitioner's basic pension ought to have been revised based on the revised basic pay of Rs.6190/- with effect from 01.03.1993. Though the 1st respondent has stated that scale of pay, dearness allowance, house rent allowance and other benefits were raised with effect from different dates, it is not in dispute that pursuant to the Settlement, scale of pay was raised with effect from 01.11.1992. If that be so, we are of the view that the petitioner is entitled to revised basic pension in terms of the revised basic salary, more particularly, when he was paid the difference of basic pay after the Settlement.

11. It is also relevant to point out that the claim of the petitioner is not at all under the newly introduced proviso to Rule 23(2) of the State Bank of India Employees Pension Fund Rules introduced by way of amendment in 1997. It is useful to refer Rule 23 prior to and after amendment;

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Rule No.	Existing Rule	Amended Rule
23. (2)	The maximum pension shall not exceed one half of the average monthly substantive salary drawn during the last twelve months pensionable service or Rs.2400/- p.m.(Pro-rata in the case of part time employees) whichever is less.	The maximum pension shall not exceed one half of the average monthly substantive salary drawn during the last twelve months pensionable service or Rs.2400/-p.m.(Pro-rata in the case of part time employees) whichever is less. Provided that the maximum amount of pension shall be increased for the members who retired retire on or after 1.11.1993 from Rs.2400/- as mentioned above to Rs.4250/- (pro-rata in the case of part time employees)after adjust-ment of dearness allowance on the basic pay upto 1148 points in the quarterly average of the All India Class Consumer Price Index (General) Base 1960-100.

12. It is the claim of the 1st respondent Bank that inasmuch as the Rules have been amended in the year 1997 with effect from 01.11.1993, the revised pension has been given effect to only from 01.11.1993 and inasmuch as the petitioner retired on 28.02.1993, he is not eligible for revision of pension under the amendment made therein. The said objection is not acceptable, since, as stated earlier, de hors the amendment, the petitioner is entitled to a monthly pension of Rs.2400/- under the unamended Rule 23(2) in view of the fact that his last drawn basic salary has been fixed at Rs.6190/- with effect from 01.01.1992. Under the unamended Rule 23(2), he is entitled to a maximum pension, which shall not exceed one half of the average monthly substantive salary drawn during the last 12 months pensionable service or Rs.2400/- per month whichever is less. As rightly pointed out, one half of his average monthly substantive salary drawn during the last 12 months pensionable service works out to Rs.2444/-; but he is entitled to a maximum monthly pension of Rs.2400/- with effect from 01.03.1993 only as per Rule 23(2) as it stood before amendment. As rightly pointed out, the petitioner is claiming only the maximum pension payable to him under Rule 23(2) before its amendment based on the last drawn salary and the settlement dated 14.02.2005 which has accrued to him and had crystalised much before the amendment. Both respondents 1 and 2 as well as the learned Judge have not adverted to the above crucial question and rejected the lawful claim of the petitioner.

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13. Another objection by the 1st respondent Bank is that the writ petition is liable to be dismissed on the ground of delay or laches on the part of the petitioner. According to them, there is a long delay of 8 years in filing writ petition from the date of his retirement and 7 years from the date of Settlement. In the counter affidavit, it is stated that the petitioner ought to have approached this Court at an earliest point of time and because of delay and laches on his part, the writ petition is liable to be dismissed.

14. We are unable to accept the said contention for the following reasons:

In S.K.Mastan Bee ..vs.. General Manager, South Central Railway and another ((2003)1 SCC 184), the Honourable Supreme Court has accepted the claim of the illiterate widow with meagre resources, who had been deprived by the Railways of her Gangman husband's arrears of family pension, and issued appropriate direction for settlement despite delay. In our case, it is true that the petitioner retired on 28.02.1993. It is seen from the information furnished in the affidavit, after spending substantial time with the 1st respondent Bank, he made a written representation on 16.07.1997 to the Chief General Manager, State Bank of India, Local Head Office, Chennai. Another representation was made on 14.12.1999 to the same officer. Since there was no response, he made another representation on 28.02.2000 to the Deputy Managing Director of State Bank of India, Central Office, Mumbai. On getting a reply dated 06.03.2000, the petitioner made another representation on 25.05.2000 to the Assistant General Manager, P.P.G.Department, State Bank of India, Chennai-1. After finding no response, he sent a legal notice through his advocate on 23.12.2000 to both the respondents. A reply was received only on 29.05.2001 negativing his claim. Thereafter, the petitioner filed the writ petition in June 2001. From then onwards, he was fighting in this Court by way of writ petition and writ appeal. In those circumstances, the petitioner cannot be blamed for the delay if any in approaching this Court. Accordingly, we reject the objection raised by the 1st respondent.

15. Under these circumstances, we are satisfied that the petitioner has made out a case for issuance of Writ of Mandamus. Unfortunately, the relevant aspect was not adverted to and considered by the learned Judge. Accordingly, the order of the learned single Judge dated 02.08.2002 is set aside. There shall be a direction to the respondents to fix his basic pension correctly based on his revised basic pay of Rs.6190/- subject to a maximum of Rs.2400/- with effect from 01.03.1993 as per Rule 23(2) of the State Bank of India Employees Pension Fund Rules, 1955 as it stood on 01.03.1993 read with the industry-wise Settlement dated 14.02.1995 (Bipartite Settlement) and pay all the arrears thereof from 01.03.1993 within a period of eight weeks from the date of receipt of a copy of this order.

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Writ Appeal is allowed with costs of Rs.5,000/-.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Chief General Manager,
   State Bank of India,
   Local Head Office,
   21, Rajaji Salai,
   Chennai-1.

2. The Trustees,
   IBI/SBI Employees Pension
   and Guarantee Fund, State Bank of India,
   Central Office, Madam Cama Road,
   Bombay-21.

1 cc To M/S.Row and Reddy, Advocate, SR.60480.
1 cc To Mr.P.Sukumar, Advocate, SR.60872.

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